

ESTTA Tracking number: **ESTTA497437**

Filing date: **10/01/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|---------------------------|--|
| Proceeding | 91206679 |
| Party | Defendant Dark Cyde Supplements, LLC |
| Correspondence Address | ROBERT H. THORNBURG ALLEN, DYER, DOPPELT, MILBRATH & GILCHRS 777 BRICKELL AVE STE 1114 MIAMI, FL 33131-2867 rthornburg@addmg.com |
| Submission | Answer |
| Filer's Name | Allison R. Imber |
| Filer's e-mail | aimber@addmg.com |
| Signature | /Allison R. Imber/ |
| Date | 10/01/2012 |
| Attachments | Answer. and Affirmative Defenses.pdf (7 pages)(18794 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | | |
|-----------------------------|---|-------------------------------|
| PERFORMANCE FORMULATIONS, |) | Opposition No. 91206679 |
| INC.; FORMULIFE, INC., |) | TM App. Serial Nos. 85/539196 |
| |) | 85/539184 |
| Opposers, |) | |
| |) | |
| v. |) | |
| |) | |
| |) | |
| DARK CYDE SUPPLEMENTS, LLC, |) | |
| |) | |
| Applicant. |) | |
| |) | |
| |) | |

APPLICANT’S ANSWER AND AFFIRMATIVE DEFENSES TO
NOTICE OF OPPOSITION

Applicant Dark Cyde Supplements, LLC (“Applicant”), though its undersigned counsel, hereby submits its Answer and Affirmative Defenses to the Notice of Opposition (“Opposition”) filed by Opposers Performance Formulations, Inc. d/b/a Dark Cyde and Formulife, Inc. (collectively, “Opposers”). Applicant denies that Opposers will be damaged by the registration of its marks, and further denies that Opposers’ marks are famous and capable of being diluted. Applicant is without information and belief as to whether or not Opposers have standing to pursue this Opposition, and accordingly denies same.

1. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 1 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

2. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 2 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

3. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 3 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

4. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 4 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

5. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 5 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

6. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 6 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

7. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 7 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

8. Applicant denies that there are documents attached to the Opposition labeled as Exhibits A and B. Applicant is without knowledge or information sufficient to admit or deny the remainder of the allegations contained in Paragraph 8 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

12. [sic] Applicant denies that Opposers' marks are famous. Applicant is without knowledge or information sufficient to admit or deny the remainder of the allegations contained in Paragraph 12 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

13. [sic] Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 13 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

14. [sic] Applicant admits that it is managed by Renato Teles and Teles Import and Export, Inc., but denies that Mr. Teles has been “passing off goods as Opposer’s [sic] brand.”

15. [sic] Applicant admits that it was formed in February of 2012, but denies that Mr. Teles has misappropriated Opposers’ brand and trademarks.

16. [sic] Applicant denies that it “is selling counterfeit products under Opposer’s [sic] Dark Cyde brand.” Applicant is without knowledge or information sufficient to admit or deny what Opposer has allegedly “learned,” and based upon such lack of knowledge or information, hereby denies same.

17. [sic] Applicant denies the allegations contained in Paragraph 17 of the Opposition.

18. [sic] Applicant denies that it is marketing products under Opposers’ trademarks. Applicant is without knowledge or information sufficient to admit or deny the remainder of the allegations contained in Paragraph 18 of the Opposition, and based upon such lack of knowledge or information, hereby denies same.

19. [sic] Applicant denies the allegations contained in Paragraph 19 of the Opposition.

20. [sic] Applicant denies the allegations contained in Paragraph 20 of the Opposition.

21. [sic] Applicant denies the allegations contained in Paragraph 21 of the Opposition.

22. [sic] Applicant denies the allegations contained in Paragraph 22 of the Opposition.

23. [sic] Applicant denies the allegations contained in Paragraph 23 of the Opposition.

24. [sic] Applicant denies the allegations contained in Paragraph 24 of the Opposition.

25. [sic] Applicant denies the allegations contained in Paragraph 25 of the Opposition.

26. [sic] Applicant denies the allegations contained in Paragraph 26 of the Opposition.

27. [sic] Applicant denies the allegations contained in Paragraph 27 of the Opposition.

28. [sic] Applicant denies the allegations contained in Paragraph 28 of the Opposition.

29. [sic] Applicant admits that Opposers have purported to file this Opposition, and that the Opposition speaks for itself. Applicant denies any allegations contained in Paragraph 29 not expressly admitted herein.

30. [sic] Applicant admits that the Opposition speaks for itself. Applicant denies any allegations contained in Paragraph 30 not expressly admitted herein.

31. [sic] Applicant admits that the Opposition speaks for itself. Applicant denies any allegations contained in Paragraph 31 not expressly admitted herein.

32. [sic] Applicant admits that the Opposition speaks for itself. Applicant denies any allegations contained in Paragraph 32 not expressly admitted herein.

33. [sic] Applicant admits that the Opposition speaks for itself. Applicant denies any allegations contained in Paragraph 33 not expressly admitted herein.

34. [sic] Applicant admits that Opposers have filed this Opposition, and submits that the Opposition speaks for itself. Applicant denies any allegations contained in Paragraph 34 not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Opposers have failed to state a claim upon which relief can be granted.
2. Opposers' marks are not famous.
3. Opposers' marks are directed to goods and/or services, channels of trade and consumers which are distinguishable from Applicant's goods and/or services, channels of trade and consumers, and are therefore unlikely to be confused with Applicant's mark.
4. Opposers and/or Opposers' marks are not likely to be damaged or harmed by registration of U.S. Application Serial Nos. 85/539196 and 85/539184.
5. Upon information and belief, Opposers have abandoned their alleged trademark rights by virtue of the non-use of Opposers' alleged marks coupled with an intent not to resume such use.

Dated: October 1st, 2012

Respectfully Submitted,

/Allison R. Imber/
Robert H. Thornburg, Esq.
David L. Sigalow, Esq.
Allison R. Imber, Esq.
Allen, Dyer, Doppelt, Milbrath
& Gilchrist, P.A.
255 South Orange Avenue
Post Office Box 3791
Orlando, FL 32802
Tel: (407) 841-2330
Fax: (407) 841-2343
dsigalow@addmg.com

aimber@addmg.com

**Attorneys for Applicant
Dark Cycle Supplements, LLC**

Certificate of Service

The undersigned hereby certifies that on this 1st day of October, 2012, a copy of the foregoing was served via email and first class mail, postage prepaid, on the following:

David J. Moraine
Marchand & Moraine, LLP
10440 North Central Expressway, Suite 643
Dallas, Texas 75231
djmoraine@marchandmoraine.com
vrossi@marchandmoraine.com

Attorneys for Opposers

Michel Rodriguez